

August 18, 2005

Gijai Rosen, Treasurer  
Los Osos CSD Recall Committee  
*[Address Redacted]*  
Los Osos, CA 93402

**Re: Your Request for Advice  
Our File No. A-05-145**

Dear Mr. Rosen:

This letter is in response to your request for advice on behalf of Los Osos Community Services District Recall Committee and Candidates for Los Osos Community Services District, Chuck Cesena, Steve Senet, and John Fouche,<sup>1</sup> regarding the campaign provisions of the Political Reform Act (the "Act").<sup>2</sup> This letter is solely based on the facts presented to us in your request. The Commission does not act as a finder of fact when issuing advice or informal assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) The Commission is charged with interpreting and enforcing the provisions of the Act, and may provide advice only with respect to those provisions. (Section 83114.) You will wish to contact the county election office for purposes of complying with a local campaign ordinance in the event that one exists.

### **FACTS**

Los Osos Community Services District Recall Committee was formed upon its initiation of a petition drive to gather signatures to qualify three petitions to recall three directors on the Los Osos Community Services District Board. In addition to unseating the three board members, Los Osos CSD Recall Committee will also be the central

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<sup>1</sup> A letter verifying that you are authorized to request advice on behalf of the three named candidates was received by the Commission on August 18, 2005.

<sup>2</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

fundraiser for three candidates whom it supports as replacements for the directors subject to recall.<sup>3</sup> All of the money raised has been for these purposes.

The three candidates Los Osos CSD Recall Committee supports submitted their Candidate Statements of Intention, Forms 501, to the county clerk in July. You state that Los Osos CSD Recall Committee is in no way controlled by the candidates nor do the candidates hold officer positions on the committee.

## QUESTIONS AND ANSWERS

1. *Is Los Osos CSD Recall Committee (“recall committee”) considered a “primarily formed” or “general purpose” recipient committee under the Act?*

Section 82047.5 states that:

“‘Primarily formed committee’ means a committee pursuant to subdivision (a) of Section 82013<sup>4</sup> which is formed or exists primarily<sup>5</sup> to support or oppose any of the following:

- (a) A single candidate.
- (b) A single measure.
- (c) A group of specific candidates being voted upon in the same city, county or multicounty election.
- (d) Two or more measures being voted upon in the same city, county, multicounty, or state election.”

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<sup>3</sup> Although your initial request for advice stated that you were also gathering signatures to qualify a ballot measure supporting a vote on the construction of a wastewater system in your community, in a telephone conversation on July 29, 2005, you stated that this was no longer the case.

<sup>4</sup> Section 82013(a) defines a committee as any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year.

<sup>5</sup> This phrase is not defined in the Act or in the Commission's regulations. However, the *Moll* Advice Letter, No. A-97-080, states that “a committee should be presumed to be a primarily formed committee if it makes 80 percent or more of its total contributions to and/or expenditures on behalf of a single candidate or measure, or a group of specific candidates being voted upon in the same city, county, or multicounty election, or two or more measures being voted upon in the same city, county, multicounty, or state election.”

Section 82043<sup>6</sup> defines the term “measure” to include, among other things, officeholder recalls. Under the facts presented, the recall committee is supporting three *candidates* and three recall drives with equivalent amounts of committee funds and resources given to each. Thus, the recall committee does not meet the definition of primarily formed committee. Section 82027.5 defines a “general purpose committee” as any committee pursuant to section 82013(a) which is formed or exists primarily to support or oppose more than one candidate or ballot measure, except as provided in section 82047.5, referenced above. The recall committee meets this definition. Therefore, assuming the recall committee has raised \$1,000 or more in contributions in the calendar year it will be classified as a general purpose recipient committee.

2. *If the recall committee funds, in full, all campaign expenses for the three candidates it is supporting, will the candidates be required to file Forms 470?*

The Act requires candidates and officeholders to file periodic campaign statements disclosing contributions<sup>7</sup> received and expenditures<sup>8</sup> made in connection with state and local elections. (Section 84100, et seq.) These statements are filed at specified times and places depending on the location and activities of the particular candidate or committee. (Sections 84200-84215.) Committees controlled by candidates are required to file the reporting statement Form 460 semi-annually and on certain other prescribed dates falling in the period before the election in which the candidate appears on the ballot. (Sections 84200 and 84200.5.)

Although section 84200(a) requires each candidate and elected officer to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31, a candidate who receives less than \$1,000 in contributions and who makes less than \$1,000 in expenditures during a calendar year may file one short form campaign statement, Form 470, for that year, essentially declaring that he or she will raise and spend less than \$1,000 during the calendar year.<sup>9</sup> (Section 84206; regulation 18406.)

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<sup>6</sup> “Measure” means any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot.” (Section 82043.)

<sup>7</sup> A contribution is defined in section 82015, in part, as: “. . . a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.”

<sup>8</sup> An expenditure is defined in section 82025 as any payment made for political purposes. Under regulation 18225, a payment is made for political purpose when it is “made by: [a] candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy. . . .” (Regulation 18225(a)(2)(A).)

<sup>9</sup> Whether or not the three candidates in question are eligible to file Form 470 is further discussed below.

The first issue is whether or not the three candidates are controlling the recall committee. If the answer were “yes,” then the candidates would jointly file a Form 460 to reflect the activities of their controlled committee. Section 82016 describes two ways in which a committee is considered a controlled committee. First, the candidate and the committee may act jointly in making expenditures. Second, if the candidate (or his or her agents) has a significant influence on the actions or decisions of the committee, the candidate will be considered to control it. Because the statutory definition of controlled committee focuses on the making of expenditures, any significant discussion and participation by the three candidates in the recall committee’s expenditures will raise the question of whether the candidates control the committee. In addition, if the candidates were involved in developing or implementing strategy with the committee, that, too, would constitute control. (*Dichiara* Advice Letter, No. I-02-040; *Madden* Advice Letter, No. A-85-197, copies enclosed.)

You have stated in your request for advice that none of the three candidates will have control over the funds or actions of the recall committee. If this is so, then the recall committee is not a controlled committee. However, we stress that if the candidates do, in fact, participate in the decisionmaking process or otherwise exercise significant influence over the actions or decisions of the recall committee, then the recall committee is a controlled committee.

*3. Assuming that the recall committee will be supporting three candidates as well as the recall of three officeholders, what issues may arise?*

The main issue you will wish to be aware of is whether the expenditures made by the recall committee in support of the three candidates will be considered to be independent expenditures or contributions to the candidates.

To mark the distinction between the campaign expenditures of a committee acting independently of a candidate versus campaign expenditures coordinated with a candidate, the Act employs the concept of the “independent expenditure,” which is defined at section 82031. The term incorporates two essential elements; the expenditure must fund “a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified [ballot] measure,” and it must not be “made at the behest of” of the affected candidate or committee. Thus, an expenditure is not an “independent expenditure” if it funds a communication that either lacks express advocacy or is “made at the behest of” the affected candidate or ballot measure. Section 82015(a) defines a “contribution” as a payment made to or at the behest of a candidate except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that the payment is not made for political purposes. Regulation 18225.7 establishes that ““made at the behest of” means made under the control or at the

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direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of” a candidate. (Regulation 18225.7(a), copy of regulation enclosed.)

Thus, although the candidates supported by the recall committee may not control the recall committee, if payments supporting them are made at the candidates’ behest, the payments will constitute nonmonetary contributions received by the candidates. Under the Act, any person who receives contributions totaling \$1,000 or more in a calendar year is a “committee.” (Section 82013(a).) Therefore, if any or all of the candidates the recall committee supports receives contributions of \$1,000 or more in a calendar year, each candidate will be required to file a Form 410, Statement of Organization, and periodic Forms 460, the reporting form filed by committees.

For further information about filing requirements applicable to general purpose committees and candidates, you will want to refer to the Information Manual C, Campaign Provisions of the Political Reform Act for: General Purpose Recipient Committees (Including Sponsored Committees, Political Party Committees, and County Central Committees), the 2005 Campaign Manual Addendum, and Campaign Disclosure Manual 2 - Information for Local Candidates, Superior Court Judges, Their Controlled Committees, and Primarily Formed Committees for Local Candidates (revised May 2005), copies of which are enclosed. You are also always encouraged to call our Technical Assistance Division at 866-275-3772.

*3. Are internet URL names permitted as committee names?*

Yes. Although regulation 18402 prohibits two committees from having the same name, the Act contains no other prohibitions regarding impermissible names for a general purpose recipient committee.

*4. Are you permitted to file Form 460 using a report format you create rather than the FPPC-created Form 460?*

A committee may create its own version of the Form 460 if the committee-created form meets with Commission approval. A member of the Commission’s staff will contact you by telephone concerning the recall committee’s use of a computer-generated campaign statement.

*5. Does the name appearing on your committee’s bank account need to match the form 410 name?*

Although committee funds may not be commingled with any individual’s personal funds (section 84307), there is nothing else in the Act that establishes requirements for a general purpose committee’s bank account. You may wish to contact the Internal Revenue Service at 800-829-1040 and the Franchise Tax Board at

800-338-0505 to see if these agencies have any requirements that may be applicable to your question.

6. *Do you have recommendations or are you able to identify which of the FPPC referral websites that support campaign management are the most popular?*

The FPPC is unable to make such recommendations.

If you have any other questions regarding this matter, please contact me at 916-322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: Adrienne Korchmaros  
Political Reform Consultant  
Technical Assistance Division

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